

IN THE IOWA DISTRICT COURT FOR DECATUR COUNTY

DECATUR COUNTY, IOWA,

Petitioner,

vs.

PUBLIC EMPLOYMENT RELATIONS
BOARD,

Respondent,

PUBLIC, PROFESSIONAL &
MAINTENANCE EMPLOYEES,
LOCAL 2003,

Intervenor.

NO. CL 3269

RULING ON PETITION
FOR JUDICIAL REVIEW

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INTRODUCTION

Petitioner Decatur County, Iowa appeals a decision by Respondent Public Employment Relations Board (PERB) finding that a proposal offered by Intervenor Public, Professional & Maintenance Employees, Local 2003 (PPME) during collective bargaining constitutes a mandatory subject of bargaining. Decatur County requested that the PERB determine the negotiability status of the proposal, which concerns the accrual of sick leave, vacation time, and holidays while an employee is absent from work and receiving workers' compensation benefits. After the PERB determined that PPME's proposal was mandatorily negotiable, Decatur County filed an application for rehearing, and that application was deemed denied when the PERB did not grant the application within the time period prescribed by Iowa Code section 17A.16(2).

Iowa Code section 17A.19 authorizes judicial review of agency action. The

district court functions in an appellate role; its review of the agency decision is at law and not de novo. Freeland v. Employment Appeal Bd., 492 N.W.2d 193, 196 (Iowa 1992). The court is bound by the agency's findings of fact if they are supported by substantial evidence. Roberts v. Iowa Dep't of Job Service, 356 N.W.2d 218, 221 (Iowa 1984). The court is not bound by an erroneous interpretation of law by the agency. Cosper v. Iowa Dep't of Job Service, 321 N.W.2d 6, 10 (Iowa 1982). After considering all arguments, oral and written, and whether or not discussed herein, the court enters the following ruling.

DISCUSSION

During the bargaining process, PPME offered the following proposal: "While on Workers [sic] Compensation leave, all employee benefits will continue to accrue." The parties agree that the proposal would affect the accrual of sick leave, holidays, and vacation time. They dispute whether the subject of the proposal is mandatory or prohibited.

Bargaining subjects are classified as either mandatory, permissive, or illegal. Charles City Community Sch. Dist. v. Pub. Employment Relations Bd., 275 N.W.2d 766, 769 (Iowa 1979). Under Iowa Code section 20.9, those subjects designated as mandatory are "wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, [and] in-service training." Section 20.9 defines permissive subjects as "other matters mutually agreed upon."

Determining whether a proposal is a mandatory subject of bargaining involves a two-step analysis. Charles City Educ. Ass'n v. Pub. Employment

Relations Bd., 291 N.W.2d 663, 666 (Iowa 1980). First, the court must decide whether the proposal falls within the meaning of one of the mandatory subjects specified in section 20.9. Id. Second, the court must insure that there is no legal prohibition against bargaining on the subject. Id. In making its assessment regarding the classification of the bargaining subject, the court does not consider whether the proposal is fair or financially reasonable. State v. Pub. Employment Relations Bd., 508 N.W.2d at 673. Rather, it limits its inquiry to whether the proposal, on its face, qualifies as a mandatory bargaining subject. Id. The court determines the scope of the proposed bargaining topic by examining what the proposal, if incorporated into the collective bargaining agreement, would require an employer to do. Id.

In this case, the proposal would require Decatur County to continue providing certain benefits -- sick leave, holidays, and vacation time -- to employees who are absent from work and receiving workers' compensation benefits. The court agrees with the PERB's conclusion that the proposal falls within the meaning of a section 20.9 mandatory subject in at least one of two ways. If an employee's absence from work while receiving workers' compensation benefits is considered a "leave of absence," then conditions (such as the accrual of sick leave, holidays, and vacation time) regarding that leave fall within the subject of "leaves of absence." See Prof. Staff Ass'n v. Pub. Employment Relations Bd., 373 N.W.2d 516, 518-19 (Iowa Ct. App. 1985)(noting that PERB decisions concerning the meaning of "leaves of absence" include such factors as when and how often an employee may be absent and the rate of pay during the absence). Aside from the characterization of an absence covered by workers' compensation as a "leave of

absence,” sick leave, holidays, and vacation time themselves must be viewed as “leaves of absence,” and that subject encompasses the conditions under which such benefits may accrue. Thus, PPME’s proposal is a mandatory subject of bargaining.

Decatur County asserts that the proposal constitutes an illegal subject of bargaining because it contravenes a county resolution prohibiting the accrual of sick leave, holidays, and vacation time. However, the resolution is inconsistent with section 20.9, which mandates bargaining on specified topics. A county may exercise a power only if it is “not inconsistent with the laws of the General Assembly.” Iowa Code § 331.301(1). Decatur County points to Sioux City Police Officers’ Ass’n v. Sioux City, 495 N.W.2d 687 (Iowa 1993), in which the Iowa Supreme Court found that a municipal anti-nepotism resolution did not violate any state statute. That case does not support the county’s position; the court evaluated the resolution’s validity only after determining that the topic of the resolution was not subject to the mandatory bargaining provisions of section 20.9. Sioux City Police Officers’ Ass’n, 495 N.W.2d at 693. Decatur County cannot circumvent the Iowa Code’s bargaining provisions by passing a resolution on the subject.

Decatur County also argues that subjecting the proposal to bargaining violates the exclusivity provisions of Iowa Code chapter 85. Section 85.2 provides that “[w]here the ... county...is the employer, the provisions of [chapter 85] for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive....” Section 85.20 restricts an employee’s rights and remedies on account of injury or illness to those established

by the workers' compensation statute, and section 85.38 limits the employer's liability to the compensation provided under the statute. Chapter 85 does not address the accrual of sick leave, holidays, and vacation time. Decatur County itself argues in its trial brief that chapter 85 does not preclude a county resolution on the subject, since the statute speaks only to the use of past earned sick leave, holidays, and vacation time to supplement workers' compensation benefits. Similarly, because chapter 85 does not deal with the accrual issue, its exclusivity provisions do not render bargaining over that subject illegal.

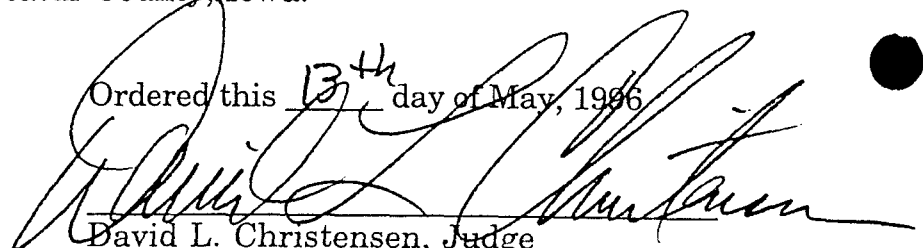
Decatur County claims that allowing the accrual of sick leave, holidays, and vacation time would result in a double recovery for injured employees. It also asserts that the PERB violated due process rights by deciding an issue not raised by either Decatur County or PPME. Those arguments are without merit. The proposal would not provide compensation in addition to that mandated by chapter 85; rather, it would allow employees to continue accruing benefits they otherwise would have received. With regard to the due process argument, the PERB undertook the two-step inquiry prescribed by the Iowa Supreme Court. The first step of that analysis requires the PERB to determine whether the proposal in question falls within any of the mandatory subjects listed in section 20.9. In so doing, the PERB is not limited to an examination of only those subjects highlighted by the parties. The PERB's ruling does not engender any due process problems.

DISPOSITION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the decision of the Public Employment Relations Board is affirmed. The costs of this

action are taxed to Petitioner Decatur County, Iowa.

Ordered this 13th day of May, 1986


David L. Christensen, Judge
Fifth Judicial District of Iowa

Original Filed.

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